



House of Representatives

File No. 959

General Assembly

January Session, 2009

(Reprint of File No. 202)

Substitute House Bill No. 5521
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 14, 2009

**AN ACT ELIMINATING CREDIT REPORTS AS A BASIS FOR
EMPLOYMENT DECISIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) No employer or an
2 employer's agent, representative or designee may require an employee
3 or prospective employee to consent to the creation of a credit report
4 that contains information about the employee's or prospective
5 employee's credit score, credit account balances, payment history,
6 savings or checking account balances or savings or checking account
7 numbers as a condition of employment unless (1) such report is
8 substantially related to the employee's current or potential job, (2) such
9 report is required by law, or (3) the employer reasonably believes that
10 the employee has engaged in specific activity that constitutes a
11 violation of the law. For the purposes of this section, "employee"
12 means any person engaged in service to an employer in a business of
13 his employer, and "employer" means any person engaged in business
14 who has one or more employees, including the state or any political
15 subdivision of the state. For the purposes of this section, "substantially

16 related to the employee's current or potential job" means the
17 information contained in the credit report is related to the position for
18 which the employee or prospective employee who is the subject of the
19 report is being evaluated because the position (A) is a managerial
20 position which involves setting the direction or control of the business,
21 (B) involves access to customers', employees' or employer's personal or
22 financial information other than information customarily provided in a
23 retail transaction, (C) involves a fiduciary responsibility to the
24 employer, including, but not limited to, the authority to issue
25 payments, transfer money or enter into contracts, or (D) provides an
26 expense account.

27 (b) Any employee or prospective employee may file a complaint
28 with the Labor Commissioner alleging a violation of the provisions of
29 subsection (a) of this section. At the request of either party, the
30 commissioner shall hold a hearing, in accordance with the provisions
31 of chapter 54 of the general statutes. Any employer who violates
32 subsection (a) of this section shall be liable to the Labor Department for
33 a civil penalty pursuant to section 31-69a of the general statutes, as
34 amended by this act. Any party aggrieved by a decision of the
35 commissioner may appeal the decision to the Superior Court in
36 accordance with the provisions of chapter 54 of the general statutes.

37 Sec. 2. Section 31-69a of the general statutes is repealed and the
38 following is substituted in lieu thereof (*Effective October 1, 2009*):

39 (a) In addition to the penalties provided in this chapter and chapter
40 568, any employer, officer, agent or other person who violates any
41 provision of this chapter, [or] chapter 557, section 1 of this act or
42 subsection (g) of section 31-288, shall be liable to the Labor Department
43 for a civil penalty of three hundred dollars for each violation of said
44 chapters and for each violation of subsection (g) of section 31-288,
45 except that any person who violates (1) a stop work order issued
46 pursuant to subsection (c) of section 31-76a, shall be liable to the Labor
47 Department for a civil penalty of one thousand dollars and each day of
48 such violation shall constitute a separate offense, and (2) any provision

49 of section 31-12, 31-13 or 31-14, subsection (a) of section 31-15 or
50 section 31-18, 31-23 or 31-24 shall be liable to the Labor Department for
51 a civil penalty of six hundred dollars for each violation of said sections.

52 (b) The Attorney General, upon complaint of the Labor
53 Commissioner, shall institute civil actions to recover the penalties
54 provided for under subsection (a) of this section. Any amount
55 recovered shall be deposited in the General Fund and credited to a
56 separate nonlapsing appropriation to the Labor Department, for other
57 current expenses, and may be used by the Labor Department to
58 enforce the provisions of chapter 557, this chapter and subsection (g) of
59 section 31-288 and to implement the provisions of section 31-4.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	31-69a

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: See Below

Municipal Impact: None

Explanation

The bill requires the Department of Labor (DOL) to hold a hearing at the request of an employee or prospective employee who alleges their employer required their consent to create a consumer report containing certain information about their finances. The bill also makes any employer who violates the provisions of the bill liable to DOL for a civil penalty of \$300 for each violation. Although the number of hearings that will be required is unknown, it is anticipated that the revenue gain from any civil penalties imposed would off-set the cost of such hearings.

House "A" eliminates the language in the underlying bill that specifically awards a \$500 fine to an aggrieved employee.

House "B" strikes the language in the underlying bill and results in the impact described above.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5521 (as amended by House “A” and “B”)******AN ACT ELIMINATING CREDIT REPORTS AS A BASIS FOR EMPLOYMENT DECISIONS.*****SUMMARY:**

This bill bans an employer, its agent, representative, or designee, from requiring, as a condition of employment, an employee or prospective employee to consent to the creation of a credit report that includes information about his or her (1) credit score; (2) credit payment history; (3) credit, savings, or checking account balances; or (4) savings or checking account numbers. The bill creates exceptions to this ban such as when a credit report is substantially related to the person’s job or potential job.

It permits complaints regarding potential violations of this ban to be filed with the labor commissioner. The commissioner must hold a hearing whenever a party to the complaint requests it, and violators face a \$300 civil penalty for each offense. Aggrieved parties can appeal to the Superior Court.

*House Amendment “A” (1) removes the requirement that the fine be paid to the aggrieved employee and the commissioner’s authority to award other appropriate relief and (2) permits only an aggrieved employer to appeal a decision to the Superior Court.

*House Amendment “B” (1) adds credit payment history to the items an employer is barred from seeking consent to obtain; (2) refers to reports that employers seek as credit reports rather than consumer reports; (3) requires the labor commissioner to hold a hearing on a complaint when a party to the complaint requests one, rather than hold a hearing for each complaint; (4) defines when a credit report is

substantially related to a job; (5) changes the fine of \$500 per violation to a civil penalty of \$300 per violation; and (6) permits any aggrieved party to appeal in Superior Court.

EFFECTIVE DATE: October 1, 2009.

EXCEPTIONS TO THE BAN ON CREDIT REPORTS AS A CONDITION OF EMPLOYMENT

The bill creates exceptions to the ban on credit reports containing certain information if one of the following conditions are met:

1. the report is substantially related to the employee's current or potential job,
2. the report is required by law, or
3. the employer has reasonable cause to believe the employee has engaged in specific activity that constitutes a violation of the law.

Under the bill "substantially related to the employee's current or potential job" means the information is related to the position for which the employee or prospective employee is being evaluated because the job:

1. is a managerial position which involves setting the direction or control of the business;
2. involves access to customers', employees', or employer's personal or financial information other than information customarily provided in a retail transaction;
3. involves a fiduciary responsibility to the employer, including, but not limited to, the authority to issue payments, transfer money, or enter into contracts; or
4. provides an expense account.

The bill defines employee as any person engaged in service to an

employer in a business of the employer. Employer means any person engaged in business with at least one employee. It includes the state, municipalities, and any other political subdivision of the state.

ENFORCEMENT

An employee alleging a violation of the bill can file a complaint with the labor commissioner. Upon receipt of the complaint, the commissioner must hold a hearing when either party to the complaint requests one. The hearing must be held in accordance with the Uniform Administrative Procedure Act.

Employers in violation of the bill are subject to a \$300 civil penalty for each violation. Aggrieved parties can appeal to the Superior Court. Upon the request of the commissioner, the attorney general must institute a civil action to recover any unpaid penalties.

BACKGROUND

Federal Fair Credit Reporting Act (FCRA)

FCRA contains a number of requirements regarding the accuracy, fairness, and privacy of information in the files of consumer reporting agencies (CRA). It allows CRAs to issue “consumer reports” in a number of circumstances, but contains special provisions for situations where the consumer or prospective employee does not initiate the transaction (i.e., for employment background screening). Among other things, FCRA prohibits an agency from furnishing a consumer report, which may include credit information, about a job candidate or employee without getting the person’s permission. Furthermore, if the employer or prospective employer decides to use information in the consumer report to deny a job application, refuse to promote an employee, or any other “adverse action” the employer must:

1. before taking the action, give the job candidate or employee a copy of the consumer report and a summary of the person’s rights under the FCRA and
2. after taking the adverse action, give the job candidate or

employee notice that adverse action has been taken and he or she has the right to dispute the information's accuracy.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 3 (03/10/2009)

Judiciary Committee

Joint Favorable

Yea 28 Nay 14 (04/27/2009)